THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.6937 of 2007

18.7.2007

Between:

Cherukuri Srinivasulu, S/o.Venkateswarlu

… Petitioner

AND

The Joint Collector, Prakasam District, Ongole

And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.6937 of 2007

ORDER:

The petitioner is a Non Resident Indian (NRI). He is a software engineer in the United States of America (USA). In 1994, he applied to the third respondent for assignment of agricultural land by way of D-Form patta. In proceedings in F.Dis.No.38/1404, dated 30.6.1994, an extent of Acs.5.00 in survey No.389/1 situated at Pedagogulapalli village of Chandrasekharapuram Mandal in Prakasam District, was assigned/granted to him. He statedly obtained Pattadar Pass Book (PPB) and Title Deed (TD) from competent authority. The petitioner and his mother, Cherukuri Seshamma, are allegedly in possession of the land. Cherukuri Seshamma was also assigned the land admeasuring Acs.1.87 in survey No.389/2 and Acs.3.29 in survey No.387 (total admeasuring Acs.5.16) of the same village, by proceedings in F.Dis. No.36/1404, dated 30.6.1994. One Pavuluri Narayanamma claimed that she is the owner of the land assigned to the petitioner and his mother. She also sent a caveat petition to that effect. Therefore the petitioner and his mother filed O.S.No.243 of 2004 on the file of the Court of the Junior Civil Judge, Kanigiri, for permanent injunction against Narayanamma and others. In I.A.No.1182 of 2004 the said Court granted ad interim injunction. The petitioner and his mother also filed O.S.No.123 of 2005 on the file of the Court of the Senior Civil Judge, Kandukur, against respondents 1 to 3 herein, for permanent injunction. Both the suits are pending.

It is alleged that on 21.3.2007, third respondent went to petitioner's lands at 11.30 am and informed petitioner's mother that the first respondent passed orders to take possession of the lands in survey No.389/1. Mother then approached the office of the third respondent and obtained copy of the proceedings dated 13.3.2007 bearing D.Dis.No.E2/2318/2005, whereunder the first respondent cancelled DK patta in respect of land assigned to the petitioner. Aggrieved by the same, the present writ petition is filed.

The matter was heard at preliminary stage on 05.4.2007 and so

as to enable the learned Assistant Government Pleader for Revenue (Assignment) to get instructions, the matter was adjourned. On 05.6.2007, the matter was heard. It is brought to the notice of this Court that consequent to the impugned order in this writ petition, the Revenue Divisional Officer (RDO), Kandukur, passed orders canceling PPB/TD by proceedings dated 01.5.2007 and that the same is challenged in W.P. No.10282 of 2007. Therefore both the matters were directed to be listed on 12.6.2007 and on 18.6.2007. On both the occasions, learned Counsel for petitioners sought time on the ground that the Senior Counsel is not available on those days. This Court refused to adjourn the matter and reserved cases for consideration. Subsequently it is noticed that W.P. No.10282 of 2007 filed against the orders of the RDO dated 01.5.2007, is already admitted. Therefore, W.P.No.10282 of 2007 would be dealt with separately.

Initially the writ petition is filed challenging the order of the Joint Collector dated 13.3.2007 whereby and whereunder the assignment made in favour of the petitioner is cancelled. Subsequently WPMP No.10734 of 2007 is filed to amend the writ petition. The petitioner seeks to challenge para 18(1) of BSO 15 as amended by G.O.Ms.No.912, dated 02.8.1985. The main contention of the petitioner is that the exercise of revisional jurisdiction under BSO 18 by the first respondent after lapse of eleven years is barred by limitation. The first respondent did not apply mind before exercising revisional powers and therefore the impugned order is unsustainable. In challenging BSO 15(18) as amended subsequently the contention raised is that the amendment empowering the revisional authority to cancel or modify any decision taken by subordinate officials without prescription of time, is in contravention of the provisions of Para III of Constitution of India, and is unjust and unfair.

A reading of the impugned order dated 13.3.2007 shows the following. The fourth respondent was assigned land admeasuring Acs.5.00 in survey No.389/1 by the proceedings dated 02.7.1995 by the third respondent. This was however not incorporated in the records. As a result of this the petitioner, who is son-in-law of the then Panchayat Secretary of the village, was granted the same land duly incorporating in the village accounts. A complaint was made by the fourth respondent. Enquiry was conducted but the petitioner was not available as he was staying in USA. The RDO after conducting enquiry sent proposals of cancellation of the assignment made in favour of the petitioner. Show cause notice was issued on 28.10.2005 for cancellation of the assignment. The Mandal Revenue Officer (now Tahsildar), Chandrasekharapuram Mandal, made substituted service and submitted a report. During the enquiry, the first respondent found that in 10(1) Account and No.3 Cultivation Account, the name of fourth

respondent was incorporated vide patta No.681 in respect of the land in survey No.389/1 admeasuring Acs.5.00. Though the petitioner did not submit explanation, he and his mother filed civil suits on the file of the Court of the Junior Civil Judge, Kandukur. The said Court passed orders on 29.9.2006 refusing injunction on the ground that the petitioner has no balance of convenience. For these reasons, first respondent cancelled the assignment and further directed the RDO to take necessary steps to cancel the PPB/TD issued in favour of the petitioner. It may be reiterated that the RDO vide orders on 01.5.2007 cancelled PPB/TD against which the petitioner filed W.P.No.10282 of 2007.

Insofar as this writ petition is concerned, fraud and misrepresentation played prominent role in petitioner, who is the son-in-law of the then Panchayat Secretary, getting the land, which had been already assigned to fourth respondent. As found by the first respondent, the name of the fourth respondent was also registered in 10(1) and No.3 adangals. It is an irregularity as per BSO 15. Secondly under the relevant Board Standing Orders, only landless and poor persons are entitled and eligible for assignment of patta. The petitioner, who is a software engineer in USA, can never be said to be eligible for grant of patta. The submission that the power to cancel the assignment should be exercised within three years or in reasonable time, cannot be accepted. There is no denial that BSO 18 was amended by G.O.Ms.No.912, dated 02.8.1995. After the amendment, it is competent for the Joint Collector to cancel the assignment at any time if it is found that such an assignment is inequitable, or was obtained by misrepresentation or fraud. Though the petitioner filed application to amend the prayer in the writ petition and to challenge the amended BSO 15(18), this Court does not find any merit in the contention. BSO 15(18) is an executive order and it is always permissible for the Executive to modify or to amend such an order.

This Court has taken the view that when assignment was obtained by playing fraud or misrepresentation, the competent authority is not precluded from canceling the patta at any time. A reference may be made to **In Re P.Shyam Rao**[1] wherein it was laid down as under.

> Where no innocent third party interests have crept in and where the nature of fraud or misrepresentation is so glaring and patent carrying out for judicial correction and where the assignee himself was a privy to the fraud played on the State, it becomes the duty of the authority to take action immediately the fraud is detected and discovered. It is for that reason the Statute gave power without reference to any time limit. The judgment of the Division Bench of this Court reported in **A.Kodanda Rao** (supra) is one rendered under the A.P.(Andhra Area) Estates (Abolition and Convertion into

> Ryotwari) Act, 1948, and strictly speaking will be of no use in this context. Even otherwise, I am not in a position to agree with the argument that the legal concept of reasonable time is the same as the ordinary physical concept of time. This court should not support the contention which will have the effect of alienating any Government land in favour of those who having more than 13 to 20 acres each had obtained assignments on the basis that they were landless poor. The theory of arbitrary cancellation and the improper exercise of jurisdiction, are all in my opinion, inapplicable to a case of this nature. This must have been the real reason why the assignees had never appeared before the Tahsildar and never contested the matter before him in spite of the service of notices on them. Having thus deliberately avoided the inquiry conducted by the Tahsildar, the assignees cannot now be heard to say that the inquiry itself was illegal and arbitrary.

In view of the above, exercise of power by the first respondent is unassailable. The submission that the first respondent failed to apply mind is devoid of any merit. The RDO and the MRO conducted enquiry and submitted reports. The first respondent also verified the records and found the name of the fourth respondent in the village revenue accounts. The submission that Para 18 of BSO 15 is *ultra vires* and unconstitutional has no merit. Even according to the petitioner, BSO 15(18) is in the nature of administrative instruction and it is always open to the Government to amend such executive instruction. Secondly fraud unravels everything and the petitioner who obtained benefit by misrepresentation and fraud cannot be allowed to retain the benefit notwithstanding that there is delay in exercise of power by the first respondent.

The writ petition is devoid of any merit and is accordingly dismissed. No costs.

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(**V.V.S.RAO, J**)

July , 2007.

NOTE:

Issue order copy by 20.7.2007.

(By order)

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[1] 1984(2) ALT 386